

TEMPORARY ENCROACHMENT PERMIT AND ACCESS PERMIT

This permit agreement (“Agreement”) is made this ___ day of _____, 2018, and is by and between the County of Ramsey, a political subdivision of the state of Minnesota (“County”) and the City of Saint Paul, a Minnesota municipal corporation (“City”).

Recitals

A. County is the owner of fee title to the to the real property in the City of Saint Paul, Ramsey County, Minnesota, generally located at 12, 14 and 50 West Kellogg Boulevard, St. Paul Minnesota (the “County Property”).

B. The City West Kellogg Boulevard right of way adjacent to the County Property (“ROW”) is improved with four City-owned structures (“the City Structures”): Bridge No. 62649 (“St. Peter Street Bridge”), Bridge No. 62650 (“Market Street Bridge”), Wall No. 62651 (“Wall Frame”), and Bridge No. 62555 (“Wabasha Street Freedom Bridge”). For the purposes of the Encroachment Permit and the Access Permit (as defined below), the term “Sidewalk” is construed to mean those portions of City Structures that support and constitute public sidewalk along the south side of West Kellogg Boulevard ROW and the west side of Wabasha Street ROW.

C. County demolished the buildings previously located along and adjacent to the south line of West Kellogg Boulevard ROW and the west line of Wabasha Street ROW. County constructed an engineered tie-back wall system (the “Wall”) to support the West Kellogg Boulevard ROW. County and City agree and acknowledge that County desires and intends the eventual redevelopment of the County Property to include improvements that will be located on County Property adjacent to the ROW and Sidewalk (the “New Improvements”).

D. Currently, roadside barrier is not present on the County Property, along the Sidewalk near the intersection with Market Street. Roadside barrier is needed and the County will provide it in the area identified as the General Area of the Barrier Support on sketch A-2 of attached Exhibit A (“Area of the Barrier Support”).

E. County has constructed, and City has accepted in the as-built condition pursuant to the Cooperative Agreement between County and City dated, _____, 2018, sidewalk facilities and roadside barriers on County Property adjacent to ROW between St. Peter Street Bridge and Wabasha Street Freedom Bridge (the “Wabasha Improvements”). The improvements listed herein are as described in attached Exhibit B – Ramsey County Sidewalk Extension/Barrier Support.

F. County and City desire and intend that County install in the Area of the Barrier Support improvements as described in attached Exhibit B - Ramsey County Sidewalk Extension/Barrier Support (the “Market Street Improvements”), to provide safety roadside barrier upon County Property adjacent to the ROW and in accordance with the plans and

specifications attached to this Agreement in Exhibit B (“Plans and Specs”).

G. A portion of the Market Street Improvements consisting of a ledge supported by anchors and supports will be located upon the Sidewalk and a portion will be located on County Property.

H. To complete the construction of the Market Street Improvements as provided in the Plans and Specs, the County will construct on County Property a ledge adjacent to the Sidewalk, and will need access to the Sidewalk to install anchors or other items for the ledge, and will need access to the Sidewalk to complete certain construction activities with respect to the snow melt system in the location shown on the Plans and Specs.

I. The Market Street Improvements and the Wabasha Improvements (collectively, the “County Improvements”) are intended to be temporary and will be removed when the New Improvements are constructed. When the removal takes place the modifications to the snow melt system, as provided in the Plans and Specs, will be modified to restore the snow melt system to its current or equivalent condition in the area identified in the Plans and Specs. Removal and rehabilitation is not limited to the snow melt system and shall be in accordance with the plans and specifications attached to this Agreement in Exhibit C Ramsey County Sidewalk Extension/Barrier Support Removal and Rehabilitation (“Restoration Plan”).

J. During the time period after installation of the County Improvements, City will need access over and into the County Property for the purpose of inspecting the roadway and related improvements, including the County Improvements and the City Structures.

K. County and City desire and intend by this Agreement that City grant to County an Encroachment Permit (as defined below) to allow County to enter upon the ROW to enable the County to install the County Improvements as shown on the Plans and Specs. The Encroachment Permit will also allow County to access the County Improvements to inspect, maintain, and repair the County Improvements as needed.

L. County and City further desire and intend that County grant to City an Access Permit (as defined below) to allow City to have the access, including air rights, needed to inspect the County Improvements and the City Structures using equipment placed on the Sidewalk or other location within the ROW by using an aerial bridge inspection vehicle or other equipment that swings out over the County Property.

M. County agrees that the County Improvements will be removed and restoration will take place in the manner as provided in the Restoration Plan and herein upon development of the County Property as the New Improvements.

NOW THEREFORE, The County and City hereby agree as follows:

1. Grant of Encroachment Permit. For and in consideration of the sum of One and 00/100 Dollar (\$1.00), the receipt of which is hereby acknowledged, and in consideration of the promises, conditions, and covenants contained herein and the Recitals above, which are

incorporated herein, City hereby grants to County an encroachment permit with respect to the ROW, Sidewalk and City Structures for the construction and installation of the County Improvements as shown on A-2 of attached Exhibit A (the “Encroachment Permit”).

2. Use of the Encroachment Permit. The purpose of the Encroachment Permit is to enable the County to encroach into the ROW to construct, inspect, monitor, maintain, and correct deficiencies found in the County Improvements as described and provided in the Plans and Specs, Recitals, and the attached Exhibits, which are incorporated herein by reference. County shall only use the Permit and areas of encroachment in the manner provided herein and in compliance with the requirements of previously issued City permits regarding the Property. The County must provide construction inspection, and shall have inspection personnel on site during all hours that installation of the County Improvements is taking place. Without limiting the foregoing, the County agrees to provide to the City copies of the construction record documents for the installation of the County Improvements in the ROW including, but not limited to, daily logs, as-built anchor locations (X, Y and Z coordinates), concrete mix designs, steel and epoxy material certifications, and material testing reports.

3. Annual Inspections. The City will inspect the County Improvements one time each calendar year. The County will reimburse the City the reasonable actual cost of the inspections, and will make repairs and complete maintenance respecting the County Improvements required by the annual inspection. The City will provide to the County a report of all annual inspection performed under this agreement for review, comment and discussion by the City and County before the County proceeds with any of the recommended repairs and maintenance. The delivery to the County by the City will include the following: a copy of the inspection report, a description of recommended repairs and maintenance (if any) and estimates of the cost of any repairs and maintenance. County will make repairs and perform any maintenance to the County Improvements as may be recommended by the City annual inspection report, in a timely manner. If County fails to make said repair or perform said maintenance the City shall have the right to make the repairs or perform the maintenance and the County shall reimburse the City for any and all associated actual costs.

a. City inspection services and reporting metrics will follow state and federal bridge inspection program guidance, including AASHTO Manual for Bridge Evaluation. Element conditions warranting repair and/or maintenance include but are not limited to the following:

- i. Concrete deficiencies, such as damage resulting from vehicle impact, or cracking or spalling resulting from exposure to the outdoor environment.
- ii. Joint deficiencies, such as joint material degradation or loss resulting from outdoor exposure or seasonal thermal contraction and expansion.
- iii. Concerns of a structural or safety manner, such as loose or displaced anchors, damaged metal railing, or steel section loss.

4. Revocation of Encroachment Permit. The Encroachment Permit shall be revocable

by written notice given by the City if at any time the Permit ceases to be used for the purposes stated herein or in accordance with the terms and conditions of the Permit. The notice shall be effective ten (10) days after the mailing thereof addressed to the record holder of the Encroachment Permit at its last known address by certified mail. Upon revocation the City shall allow a reasonable time to vacate the Area of the Barrier Support, not to exceed thirty days except upon mutual agreement by City and County to a longer time.

5. Sale or Lease of the County Property and Restoration. The County Property shall remain subject to sale or lease although such sale or lease shall not serve to revoke the Encroachment Permit. In addition to the Plans and Specs, the County has provided a certified restoration plan for the removal of the County Improvements and restoration of the snow melt system referred to in the Recitals as part of the construction design and Plans and Specs for the County Improvements (the "Restoration Plan"). A copy of the Restoration Plan is included in attached Exhibit C. The Restoration Plan includes restoration of other improvements made by the County on the Sidewalk. The Restoration Plan and this Encroachment Permit include the guaranty of the County that it will restore City property as provided in the plan. The Restoration Plan will be performed and completed by the County or its successor with respect to the Property in connection with the improvement of the Property as the New Improvements. The County and its successor and assigns with respect to the County Property, shall retain all risks and financial obligations with respect to the Restoration Plan, including City inspection fees attributable to the implementation of the Restoration Plan. Upon the City's inspection and acceptance of the completed work of the Restoration Plan and the payment of the fees for the inspection work, the County's obligations under this Encroachment Permit shall be completed and satisfied, except with respect to Section 7 below.

6. Compliance with Laws. In conducting its activities hereunder, County will, at its sole expense and effort, comply with all laws, ordinances, permits, rules and regulations, enacted by any federal, state, or local governmental agency having jurisdiction or control over any activity by County, its employees, agents and contractors occurring pursuant to this. County further agrees to obtain all required permits for its activities hereunder at its sole expense and to comply with all such permits.

7. Indemnification. In exercise of its rights hereunder, County agrees to indemnify, defend and hold harmless City, its employees, officials, agents, successors and assigns from and against any and all claims, costs, demands, damages, liabilities, judgments, or expenses, including attorney fees, court costs, consultant fees and other legal costs, for any personal injury, death or property damage arising out of or resulting from, or in any way associated with the activities pursuant to this Encroachment Permit by County, its employees, agents, or contractors, except for the City's negligence or willful misconduct. The obligations set forth in this Section shall continue after any termination of the Encroachment Permit as to any matters that occurred during or resulted from the term of this Agreement.

8. Assignment. This Agreement shall not be assignable by County except upon written consent of the City, except that the obligation to implement the Restoration Plan may be assigned by the County to the party constructing or installing the New Improvements or purchasing the County property.

9. Term. The Encroachment Permit shall continue in effect until completion of the Restoration Plan and subject to Section 4 above.

10. Access. The grant of the Encroachment Permit includes the right of County to have reasonable access on, over and across the ROW and City Structures to perform the work set forth in the Plans and Specs and for inspections, maintenance and repairs as provided for in this Agreement.

11. Notification. County must provide written notice to the City prior to conducting the work specified in the Plans and Specs or to complete any maintenance or repairs if the work requires access over or across the ROW or improvements owned by the City. Notwithstanding the foregoing, the County shall immediately notify the City of any event regarding the County Improvements that it considers an emergency. County may proceed to take whatever actions are necessary in order to respond to the emergency subject to compliance with applicable laws.

12. Grant of Access Permit for Inspection. County hereby grants to the City an access permit ("Access Permit") over and across the County Property in the form of a temporary air rights permit that shall extend 20' south from the northern edge of the County Property from the easterly line of City Market Street ROW, to the westerly line of Wabasha as shown on sketch A-2 of Exhibit A, and legally described on attached Exhibit A, A-1 (the "Access Area"). The purpose of this Access Permit is for the City to be able to locate an aerial bridge inspection vehicle or other equipment on the improvements at the elevation of the Sidewalk and extend a portion of the equipment with or without a bucket out over the County Property and inspect the ROW, City Structures, the County Improvements, Sidewalk, and other improvements from an aerial location. The use of the Access Permit shall not interfere with the County Improvements nor the use of the County Property.

13. Term of the Access Permit. This Access Permit runs with the land and continues until the construction and installation of New Improvements commences. County and City agree that in connection with the development of the New Improvements City and County or its successor or assign shall in good faith determine reasonable and feasible alternatives to enable the City to have access rights necessary for the inspection of the City Structures and Wall in the area of the Access Permit as shown and described on the Exhibits to this Agreement.

14. Conditions of the Access Permit. County shall have no obligations or responsibilities with respect to the City's exercise of its rights pursuant to the Access Permit except that County shall not interfere with the exercise of those rights or prohibit the exercise. City shall exercise its rights under the Access Permit without cost or expense to the County, except that inspections of the County Improvements are subject to the terms and conditions set forth above in Section 3.

15. Indemnification of County. In exercise of its rights under the Access Permit the City agrees to indemnify, defend and hold harmless County, its employees, officials, agents, successors and assigns from and against any and all claims, costs, demands, damages, liabilities, judgments, or expenses, including attorney fees, court costs, consultant fees and other legal costs, for any personal injury, death or property damage arising out of or resulting from, or in

any way associated with the activities pursuant to this Access Permit by City, its employees, agents, or contractors, except for the County's negligence or willful misconduct. The obligations set forth in this Section shall continue after any termination of the Access Permit as to any matters that occurred during or resulted from the term of this Agreement.

16. Notices. All notices or communications between County and City shall be deemed sufficiently given or rendered if in writing and delivered to either party personally; or if mailed by United States registered or certified mail to the addresses set forth below, or such future addresses as may be subsequently supplied by the parties hereto to each other, return receipt requested, postage prepaid; or if transmitted by facsimile copy followed by mailed notice; or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

County: Ramsey County
Property Management
121 7th Place East, Suite 2200
Saint Paul, MN 55101

Attn: Director of Property Management

City: **City of Saint Paul**
1500 City Hall Annex
25 W. Fourth Street
St. Paul, MN, 55102
Attn: Director of Public Works

17. Prior or Outstanding County Wall Commitments. County shall provide all documentation concerning the placement of wall anchors installed in City ROW during demolition of the Ramsey County Adult Detention Center ("RCADC") and the Ramsey County Government Center West Building ("RCGCW") and the construction of the Wall. Documentation required for each attempted or installed anchor includes the unique anchor identification number and its corresponding install location (X,Y and Z Ramsey County coordinates), depiction in plan and elevation view (with as-built plan revisions as applicable), boring log information including dates of drilling, bolt placement, grouting, testing and re-testing, bolt properties including size and grade, angle and depth of actual installation, grouting information including spec mix and quantity, installer notes or inspector comments, testing results including materials testing reports, certifications as may be appropriate for materials including grout and steel products, and any related Project records.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first written above.

COUNTY

RAMSEY COUNTY

By: _____
County Manager

Date: _____

Approval Recommended

By: _____

Date: _____

Approved as to form

By: _____

Assistant County Attorney

Date: _____

CITY OF SAINT PAUL

Director of Public Works

Approved as to form:

Assistant City Attorney

Exhibit A, A-1

Legal Description of the Access Area

An Air rights easement extending between the elevations of 55 feet and 120 feet, City of St Paul Datum,

over all of that part of the following described property,

Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 20, Rice and Irvine's Addition, And

Those parts of the following described properties:

Lots 1, 2, and 3, Block 43, said Rice and Irvine's Addition, And

Lots 1, 2, 3, 4, 5, and 6, Auditors Subdivision No. 25, And

Spring Street, Water Street, Market Street and Wabasha Street as shown in said Rice and Irvine's Addition, said Auditors Subdivision No. 25, and in City of St. Paul, And

The westerly half of St. Peter Street as shown in said plat of Rice and Irvine's Addition,

And

That part of the easterly one-half of St. Peter Street adjoining Block 35, City of St. Paul, according to the recorded plat thereof, Ramsey County, Minnesota, lying southerly of a line described as commencing at the intersection of the center lines of said St. Peter Street and Kellogg Boulevard, (formerly Third Street and Old Third Street) as originally platted; thence southerly, along said center line of St. Peter Street, a distance of 69.13 feet to the point of beginning of the line to be described; thence easterly deflecting to the left 65 degrees 06 minutes (on the Southerly face of footing for columns as shown on City of St. Paul's Third Street Improvement Plans, dated June 28, Drawer 93, on file in the Department of Public Works) a distance of 33.11 feet to the easterly line of said St. Peter Street and said line there terminating, And

That part of the Southwest Quarter of the Northeast Quarter of Section 6, Township 28, Range 22, lying easterly of said St. Peter Street and southerly of said Auditors Subdivision No. 25,

Described as:

Beginning at the northwest corner of said Lot 8; thence North 80 degrees 09 minutes 48 seconds East, assumed bearing, along the northwesterly line of said Block 20 and its northeasterly extension, a distance of 507.78 feet to said center line of St. Peter Street; thence South 34 degrees 57 minutes 06 seconds East, along said center line of St. Peter Street, a distance of 24.51 feet to a point distant 69.13 feet southeasterly of the intersection of said center lines of St. Peter Street and Kellogg Boulevard; thence North 80 degrees 04 minutes 01 second East a distance of 342.71 feet; thence South 56 degrees 53 minutes 04 seconds East a distance of 11.31 feet; thence South 11 degrees 52 minutes 59 seconds East a distance of 70.23 feet; thence North 68 degrees 21 minutes 56 seconds East a distance of 30.81 feet; thence South 26 degrees 54 minutes 06 seconds East a distance of 8.23 feet; thence South 70 degrees 26 minutes 54 seconds West a distance of 327.86 feet to a point on said center line of St. Peter Street distant 172.73 feet southeasterly of its intersection with said northeasterly extension of the northwesterly line of Block 20; thence South 70 degrees 46 minutes 39 seconds West a distance of 286.38 feet; thence South 69 degrees 32 minutes 52 seconds West a distance of 322.45

feet; thence South 65 degrees 54 minutes 17 seconds West a distance of 21.56 feet to the northeasterly line of Block 44, said Rice and Irvine's Addition to Saint Paul; thence North 39 degrees 16 minutes 51 seconds West, along said northeasterly line of Block 44, a distance of 52.57 feet to the most northerly corner of Lot 1, said Block 44; thence North 10 degrees 28 minutes 52 seconds West a distance of 43.20 feet to the southeast corner of Lot 1, Block 21, said Rice and Irvine's Addition; thence North 9 degrees 57 minutes 53 seconds West, along the easterly line of said Lot 1, Block 21, a distance of 144.34 feet to the northeast corner of said Lot 1, Block 21; thence North 60 degrees 42 minutes 13 seconds East a distance of 69.94 feet to a point on the westerly line of said Lot 8 distant 11.20 feet southerly of the northwest corner of said Lot 8; thence North 9 degrees 57 minutes 53 seconds West a distance of 11.20 feet to the point of beginning.

AND

Those parts of Lots 1, 2, 3, 4, 8 and 9, Block 44, Rice and Irvine's Addition and Ontario Street adjoining said Lot 4 lying northerly of "Line A", easterly of "Line B" and southerly of "Line C". Said "Line A", "Line B" and "Line C" are described as follows: "Line A" is described as commencing at the most easterly corner of Block 43, said Rice and Irvine's Addition; thence southwesterly, along the southeasterly line of said Block 43, a distance of 33.91 feet; thence southwesterly deflecting right 22 degrees 25 minutes 47 seconds 322.45 feet to the point of beginning of "Line A" to be described; thence southwesterly deflecting left 3 degrees 38 minutes 35 seconds 65.40 feet; thence southwesterly 284.73 feet along a tangential curve concave to the southeast having a radius of 2435.86 feet and a central angle of 6 degrees 41 minutes 50 seconds to said "Line B" and said "Line A" there terminating. "Line B" is described as commencing at the northwest corner of the easterly 25.00 feet of Lot 5, Block 21, said Rice and Irvine's Addition; thence southwesterly, along the northerly line of said Block 21, a distance of 131.59 feet to the point of beginning of "Line B" to be described; thence southeasterly deflecting to the left 104 degrees 53 minutes 10 seconds a distance of 350.00 feet and said "Line B" there terminating.

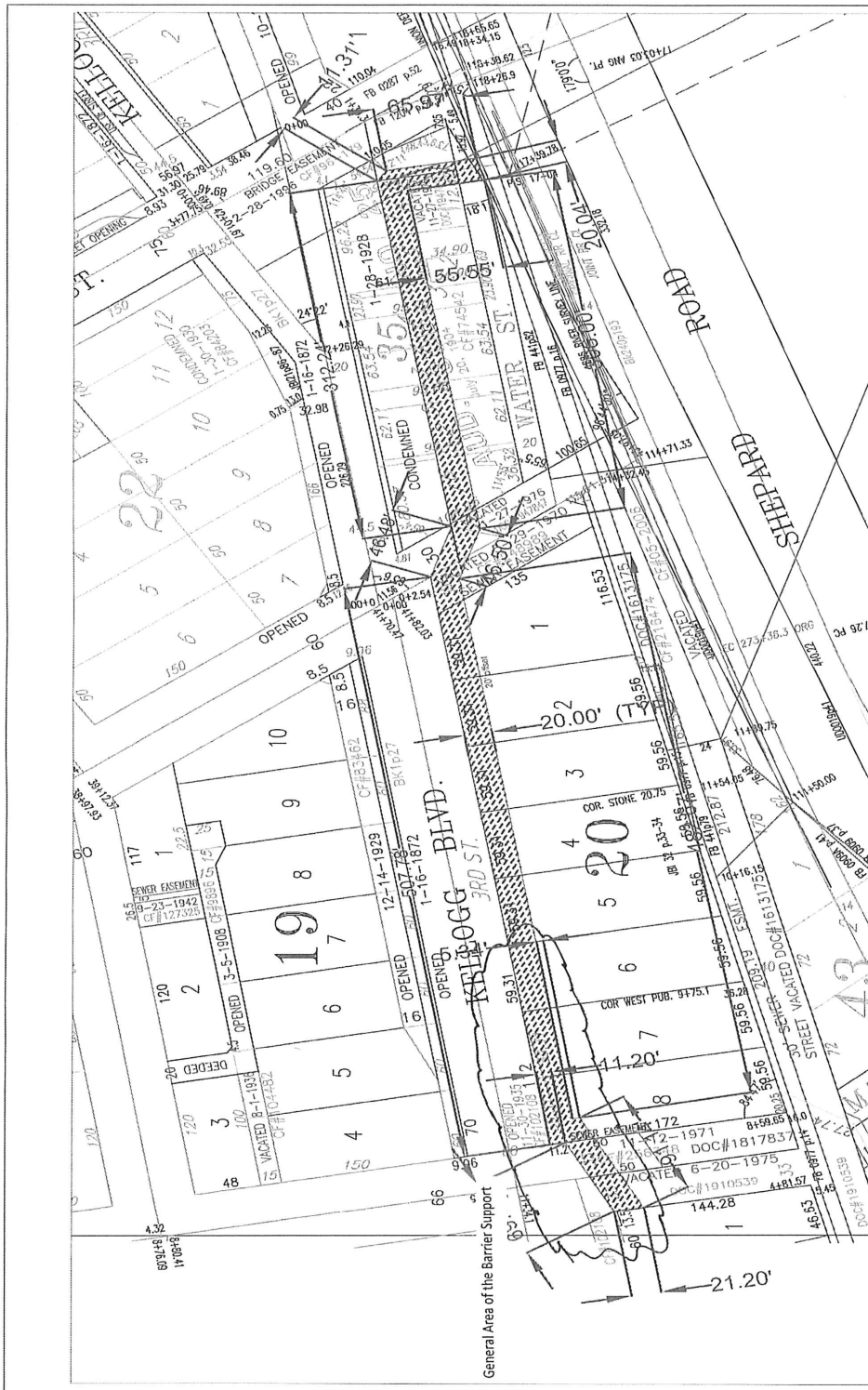
"Line C" is a line 50.00 feet northwesterly of and parallel with the centerline described in Book 240 of Deeds, page 193, Document No. 86540.

that lies within the following described lines:

Beginning at the northwest corner of said Lot 8, Block 20 Rice and Irvine's Addition to the City of Saint Paul Ramsey County, Minnesota; thence North 80 degrees 09 minutes 48 seconds East, assumed bearing, along the northwesterly line of said Block 20 and its northeasterly extension, a distance of 507.78 feet to said center line of St. Peter Street; thence south 71 degrees 23 minutes 24 seconds east 46.48 feet; thence North 80 degrees 04 minutes 01 second East 312.24 feet; thence South 56 degrees 53 minutes 04 seconds East 11.31 feet; thence South 11 degrees 52 minutes 59 seconds East a distance of 65.97 feet; thence South 74 degrees 43 minutes 09 seconds West 20.04 feet; thence North 11 degrees 52 minutes 59 seconds West 55.55 feet; thence South 80 degrees 04 minutes 01 second West 306.00 feet; thence North 71 degrees 23 minutes 24 seconds West 46.50 feet; thence South 80 degrees 09 minutes 48 seconds West 482.67 feet; thence South 9 degrees 57 minutes 53 seconds East 5.34; thence South 60 degrees 42 minutes 13 seconds west 91.14 feet to the easterly line of Lot 1, Block 21, said Rice and Irvine's Addition; thence North 9 degrees 57 minutes 53 seconds West, along the easterly line of said Lot 1,

Block 21, a distance of 21.20 feet to the northeast corner of said Lot 1, Block 21; thence North 60 degrees 42 minutes 13 seconds East a distance of 69.94 feet to a point on the westerly line of said Lot 8 distant 11.20 feet southerly of the northwest corner of said Lot 8; *thence North 9 degrees 57 minutes 53 seconds West a distance of 11.20 feet to the point of beginning.*

Exhibit A, sketch A-2 of the Access Area and the Area of Barrier Support



DESIGNED	RLA	I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.	DATE	10/27/2017
DRAWN	RLA	DATE	10/27/2017	SHEET NO. OF
DWG CHECK	RLA	DATE	10/27/2017	SHEET NO. OF
PROJECT	AIR RIGHTS			
PROJECT NUMBER	N/A			
DWG. NUMBER	KELLOGG AIR RIGHTS			
DATE	10/27/2017			

PREPARED BY BRIDGE DIVISION FOR THE CITY OF ST. PAUL, DEPARTMENT OF PUBLIC WORKS
 CITY OF SAINT PAUL AIR RIGHTS AGREEMENT
 KELLOGG BOULEVARD, MARKET TO WABASHA STREET
 EXHIBIT 'B'

Exhibit B

Plans and Specs

(See attached drawing file)

Exhibit C

Restoration Plan

(See attached drawing file)